

**A RESOLUTION RENEWING THE CITY OF  
FORT WAYNE'S CABLE TELEVISION  
FRANCHISE WITH COMCAST CABLEVISION  
OF FORT WAYNE, L.P.**

**WHEREAS**, Comcast Cablevision of Fort Wayne, L.P., (hereinafter "Comcast") filed with the City of Fort Wayne, Indiana, (hereinafter "City") a Request for Renewal within the requirements of the City's current Cable Communications Franchise (hereinafter "Cable Franchise") and also in accordance with the requirements of the Federal Cable Communications Policy Act of 1987, as amended in 1991 (hereinafter "the Cable Acts"); and

**WHEREAS**, Comcast also responded to the City of Fort Wayne's Request for Application for a Franchise Agreement and undertook a cooperative effort with the City and its consultant, Fredrikson & Byron, P.A., to develop a proposal that could be submitted to the Common Council of the City of Fort Wayne to be acted upon; and

**WHEREAS**, the franchise renewal process could not be properly concluded before the City's Cable Franchise expires on July 19, 1993, so the City extended the Cable Franchise until the franchise renewal process could be properly concluded; and

**WHEREAS**, the City has completed its negotiations and the informal franchise renewal process with Comcast and has concluded that (a) Comcast has the financial, legal and technical ability to provide cable services and facilities to the City; and (b) the franchise terms and conditions set forth in the Master Franchise Agreement (attached hereto) meet the future cable-related needs and interests of the citizens of Fort Wayne.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

**SECTION 1.** The Common Council of the City of Fort Wayne, Indiana, approves and ratifies Comcast

Cablevision of Fort Wayne, L.P.'s cable television renewal Franchise in accordance with the provision of Section 120 of the City of Fort Wayne, Indiana, Code of Ordinances.

**SECTION 2.** That this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

### Council Member

APPROVED AS TO FORM  
AND LEGALITY

J. Timothy McCaulay  
J. TIMOTHY McCAULAY, CITY ATTORNEY

Read the first time in full and on motion by Henry,  
and duly adopted, read the second time by title and referred to the  
Committee on Finance (and the City Plan Commission  
for recommendation) and Public Hearing to be held after due legal notice, at  
the Common Council Council Conference Room 128, City-County Building, Fort  
Wayne, Indiana, on 19, the 19 day of June, at 10:00 o'clock  
M., E.S.T.

DATED: 4-11-95.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Henry,  
and duly adopted, placed on its passage. PASSED LOST  
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>			<u>2</u>
BRADBURY				<u>✓</u>
EDMONDS	<u>✓</u>			
GIAQUINTA				<u>✓</u>
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 6-13-95.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)  
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. Q-30-95  
on the 13th day of June, 1995.

ATTEST:

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

(SEAL)  
Don J. Schmidt  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 14th day of June, 1995,  
at the hour of 11:30 o'clock A., M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 14th day of June,  
1995, at the hour of 1:00 o'clock P., M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR





# The City of Fort Wayne

Paul Helmke, Mayor

## A RESOLUTION RENEWING THE CITY OF FORT WAYNE'S CABLE TELEVISION FRANCHISE WITH COMCAST CABLEVISION OF FORT WAYNE, L.P.

WHEREAS, Comcast Cablevision of Fort Wayne, L.P., (hereinafter "Comcast") filed with the City of Fort Wayne, Indiana, (hereinafter "City") a Request for Renewal within the requirements of the City's current Cable Communications Franchise (hereinafter "Cable Franchise") and also in accordance with the requirements of the Federal Cable Communications Policy Act of 1987, as amended in 1991 (hereinafter "the Cable Acts"); and

WHEREAS, Comcast also responded to the City of Fort Wayne's Request for Application for a Franchise Agreement and undertook a cooperative effort with the City and its consultant, Fredriksen & Byron, P.A., to develop a proposal that could be submitted to the Common Council of the City of Fort Wayne to be acted upon; and

WHEREAS, the franchise renewal process could not be properly concluded before the City's Cable Franchise expires on July 19, 1993, so the City extended the Cable Franchise until the franchise renewal process could be properly concluded; and

WHEREAS, the City has completed its negotiations and the informal franchise renewal process with Comcast and has concluded that (a) Comcast has the financial, legal and technical ability to provide cable services and facilities to the City and (b) the franchise terms and conditions set forth in the Master Franchise Agreement (attached hereto) meet the future cable-related needs and interests of the citizens of Fort Wayne;

Comcast Franchise Renewal Resolution  
Page 2

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF  
THE CITY OF FORT WAYNE, INDIANA:

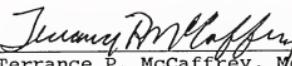
That the Board of Public Works hereby grants its  
approval of the renewal of the cable television  
franchise with the City of Fort Wayne, subject to  
final approval by Fort Wayne Common Council and the  
Mayor of Fort Wayne, in accordance with the Franchise  
Agreement attached hereto.

DATE: 4-19-95

BOARD OF PUBLIC WORKS

  
Linda Buskirk, Chairman

  
C. James Owen, Member

  
Terrance P. McCaffrey, Member

ATTEST:

  
Patricia J. Crick, Clerk

**MASTER FRANCHISE AGREEMENT**

**FORT WAYNE, INDIANA**

(Final Draft - 3/22/95)

Prepared by:

Adrian E. Herbst  
Theresa M. Harris  
Anthony S. Mendoza

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## FRANCHISE AGREEMENT

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the City of Fort Wayne, a municipal corporation of the State of Indiana, and Comcast Cablevision of Ft. Wayne L.P.

### WITNESSETH

WHEREAS, the City of Fort Wayne, pursuant to Chapter 120, Fort Wayne Municipal Code (hereinafter referred to as the "Ordinance"), is authorized to grant and renew one or more nonexclusive revocable Franchises to operate, construct, maintain and reconstruct a cable television system within the City; and

WHEREAS, the City, after due evaluation of Comcast Cablevision of Ft. Wayne, L.P., and after public hearings, has determined that it is in the best interest of the City and its residents to renew its Franchise with Comcast Cablevision of Ft. Wayne L.P.

NOW, THEREFORE, the City of Fort Wayne (hereinafter also known as the "City" or "Grantor") hereby grants to Comcast Cablevision of Ft. Wayne L.P. (hereinafter the "Grantee") renewal of its cable television Franchise in accordance with the provisions of the Ordinance and this Franchise Agreement.

### SECTION 1. RENEWAL OF FRANCHISE

#### 1.1 Grant.

The cable television Franchise granted on the \_\_\_\_\_ day of \_\_\_\_\_ to \_\_\_\_\_, and now held by Grantee, a corporation whose ownership is indicated in Exhibit A, is hereby renewed, subject to the terms and conditions of this Franchise Agreement (hereinafter

also referred to as the "Agreement"). The renewal provides Grantee with the authority, right and privilege, to construct, reconstruct, operate and maintain a cable television System and to provide cable service and any other service permitted by this Franchise within the Streets and public ways in the City as it is now or may in the future be constituted.

1.2 Right of Grantor to Issue and Renew Franchise.

Grantee acknowledges and accepts the right of Grantor to issue and/or renew a Franchise Agreement and Grantee agrees it shall not now or at any time hereafter challenge any lawful exercise of this right in any local, State or federal court. This is not, however, a waiver of any constitutional or legal right or privilege on the part of the Grantee.

1.3 Effective Date of Renewal.

The renewal shall be effective on the date that both parties have executed this Franchise Agreement, provided that said date is no later than thirty (30) days after the date the City Council, by Resolution, approves this Franchise Agreement. The renewal is further contingent upon the filing by Grantee with the City Clerk, of the executed Franchise Agreement and the required security fund and insurance certificates, except that if the filing of the security fund or any such insurance certificate does not occur within sixty (60) days after the effective date of the Resolution approving this renewal and any extension of time hereunder, the Grantor may declare this renewal null and void.

1.4 Duration.

This Franchise Agreement shall commence upon its effective date and shall expire fifteen (15) years thereafter on \_\_\_\_\_, \_\_\_, unless renewed, revoked or terminated sooner as herein provided.

### 1.5 Written Notice.

All notices, reports or demands required to be given in writing under this Franchise Agreement shall be deemed to be given when delivered personally to the Person designated below, or when five (5) days have elapsed after it is deposited in United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to City: Mayor  
City of Fort Wayne  
One Main Street, Room 900  
Fort Wayne, Indiana 46805

If to Grantee: General Manager  
Comcast Cablevision of Ft. Wayne, L.P.  
720 Taylor Street  
Fort Wayne, IN 46802

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

## 1.6 Franchise Not Exclusive.

This Franchise shall not be construed as any limitation upon the right of Grantor, through its proper offices, and in accordance with applicable law, to grant to other Persons or corporations rights, privileges or authority similar to or different from the rights, privileges and authority herein set forth, in the same or other Streets and public ways or public places or other places the Grantee is entitled to occupy by this Franchise Agreement, permit or otherwise: provided, however, that such additional grants shall not operate to

materially modify, revoke or terminate any rights granted to Grantee herein and shall be in accord with the provisions of the Ordinance, Section 120.11.

**1.7 Conflict with Cable Ordinance and Reservation of Rights.**

The provisions of the Master Cable Television Regulatory Ordinance of Fort Wayne, Indiana, Chapter 120, are hereby incorporated herein by reference as if set out in full, and form part of the terms and conditions of this Franchise Agreement. In the event of any conflict between the terms and conditions of this Franchise Agreement and the provisions of the Ordinance, the Ordinance shall control, except as may be specifically otherwise provided in this Franchise Agreement. Grantor and Grantee each reserves all the rights that they may possess under law unless expressly waived herein.

**1.8 Definitions.**

The definitions contained in the Ordinance are incorporated herein as if fully set forth.

**SECTION 2. GENERAL REQUIREMENTS**

**2.1 Governing Requirements.**

Grantee shall comply with all lawful requirements of this Agreement, the Ordinance and applicable State and federal law.

**2.2 Franchise Fee.**

The Grantee shall pay to the Grantor an annual Franchise fee of five percent (5%) of Grantee's Gross Annual Revenues. The Franchisee Fee shall be payable quarterly by

April 30, July 31, October 31 and January 31 for the preceding three (3) month periods.

Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the City, including the completion of a Franchise Fee Payment Worksheet attached hereto as Exhibit B. The Grantor is entitled to inspect such reports as provided in Section 120.26 of the Ordinance.

2.3 Recovery of Processing.

(a) During the term of this renewal, if the Grantee, pursuant to Section 120.08 of the Ordinance, initiates a request for approval regarding the transfer of this Franchise or change in control of the Grantee, the Grantee shall reimburse the Grantor for all reasonable out-of-pocket costs up to Five Thousand Dollars (\$5,000), including attorneys' and consultants' fees and costs, incurred by the Grantor as part of Grantor's review and processing of Grantee's request. Payments of such costs and expenses shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be: (i) "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the City by Grantee pursuant to Section 2.2 hereof; or (ii) part of the compensation to be paid to the City by Grantee pursuant to Section 2.2 hereof.

(b) To aid in the analysis and resolution of any future disputed matters relative to this Franchise Agreement, the Grantor and Grantee may, by mutual agreement (both as to whether to hire and whom to hire), employ the services of technical, financial or legal consultants, as mediators. All reasonable fees of the consultants incurred by the Grantor and the Grantee in this regard shall be borne equally.

2.4 Liability Insurance.

(a) Upon the effective date of renewal, the Grantee shall, at its sole expense, take out and maintain during the life of this Franchise Agreement public liability insurance with a company licensed to do business in the State of Indiana with a rating by Best of not less than "A" that shall protect the Grantee, the Grantor, and the Grantor's officials, officers, employees and agents from claims which may arise from operations under this Agreement, whether such operations are by the Grantee, its officials, officers, directors, employees and agents, or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's automobiles, products and completed operations. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall not be less than Three Hundred Thousand Dollars (\$300,000) per occurrence and Three Million Dollars (\$3,000,000) in aggregate. The following endorsements shall attach to the liability policy:

- (1) The policy shall cover Personal Injury as well as Bodily Injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad Form property damage liability shall be afforded.
- (4) The Grantor shall be named as an additional insured on the policy.

- (5) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance effected by the Grantor will be called upon to contribute to a loss under this coverage.
- (6) Standard form of cross-liability shall be afforded.
- (7) An endorsement stating that the policy shall not be cancelled without thirty (30) days written notice of such cancellation given to the Grantor.

(b) Grantor reserves the right to adjust the limit coverage requirements no more than every five (5) years. Any such adjustment by the Grantor will be no greater than the increase in the State of Indiana Consumer Price Index (all consumers) for such five (5) year period.

(c) Grantee shall submit to Grantor documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

(d) Any deductible or self-insured retention must be declared to Grantor.

2.5 Indemnification.

(a) Except as otherwise provided herein, Grantee shall indemnify, hold harmless, release and defend Grantor, its officers, agents and employees from and against any and all lawsuits, claims, actions, demands, damages, disability, losses, expenses including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any Person or entity arising out of the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible and save Grantor harmless from all matters

relative to payment of Grantee's employees including compliance with Social Security, withholdings, etc.

(b) This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by Grantee.

(c) Grantor does not, and shall not, waive any rights against Grantee which it may have by reason of this indemnification, because of the acceptance by Grantor, or the deposit with Grantor by Grantee, of any of the insurance policies described in this Agreement.

(d) This indemnification by Grantee shall apply to all damages and claims for damages of any kind suffered by reason of any of the aforesaid operations referred to in this Section, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

(e) Grantee shall not be required to indemnify Grantor for negligence or misconduct on the part of Grantor or its officials, boards, commissions, agents, or employees (hereinafter "such acts"). Grantor shall hold Grantee harmless for any damage resulting from any such acts of the Grantor or its officials, boards, commissions, agents, or employees in utilizing any PEG access channels, equipment, or facilities and for any such acts committed by Grantor in connection with work performed by Grantor and permitted by this Agreement, on or adjacent to the Cable System.

2.6 Grantee's Insurance.

Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until both shall have obtained or cause to be obtained all insurance required under this Section. Said insurance shall be maintained in full force and effect until the completion of reconstruction, and approval thereof by the Grantor.

2.7 Workers' Compensation Insurance.

Grantee shall obtain and maintain Workers' Compensation Insurance for all Grantee's employees, and in case any work is sublet, Grantee shall require any subcontractor similarly to provide Workers' Compensation Insurance for all subcontractor's employees, all in compliance with State laws, and to fully protect the Grantor from any and all claims arising out of occurrences on the work. Grantee hereby indemnifies Grantor for any damage resulting to it from failure of either Grantee or any subcontractor to take out and maintain such insurance. Grantee shall provide the Grantor with a certificate of insurance indicating Workers' Compensation coverage prior to commencing reconstruction of the system.

2.8 Security Fund.

(a) Within sixty (60) days of the Resolution adopting this Agreement, Grantee shall establish and provide to Grantor a security fund, as security for the faithful performance by Grantor of all material provisions of this Agreement. The security fund shall consist of two (2) parts. The first part shall be a construction bond, which shall be in the amount of Five Hundred Thousand Dollars (\$500,000), and in a form acceptable to Grantor's City Attorney. The second part shall be in the amount of at least Twenty-Five Thousand Dollars (\$25,000) and it shall be in the form of an irrevocable letter of credit. Such a letter of credit

can be drawn on directly by the City for payment of liquidated damages and the Grantee will replenish it every time a draw-down occurs so as to retain the full Twenty-Five Thousand Dollars (\$25,000). The form of the letter of credit shall be acceptable to the City.

(b) The construction bond shall be maintained at the Five Hundred Thousand Dollar (\$500,000) level until the System upgrade and/or rebuild provided for in Section 3.1 herein is completed, at which time the bond shall be released. The residual portion of the security fund shall be maintained at the Twenty-Five Thousand Dollar (\$25,000) level throughout the term of this Agreement.

(c) The letter of credit may be drawn on by Grantor for those purposes specified in Section 2.9 (d) hereof, according to the procedures of Section 2.9.

(d) Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's rights-of-way.

## 2.9 Procedure for Remedyng Franchise Violations.

(a) The procedures for remedying Franchise violations or breaches shall be consistent with the procedures of the Ordinance. Grantor, by action of the Mayor, shall first notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than ten (10) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Agreement or the Ordinance, and thirty (30) days in all other cases. If Grantee fails to correct the violation within the time prescribed or if Grantee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, the Grantee

shall then be given a written notice of not less than twenty (20) days of a public hearing to be held before the Council. Said notice shall specify the violations alleged to have occurred.

(b) At the public hearing, the Council shall hear and consider all relevant evidence, and thereafter render findings and its decision.

(c) In the event the Council finds that Grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed. In determining whether a violation is material Grantor shall take into consideration the reliability of the evidence of the violation, the nature of the violation and the damage, if any, caused to the Grantor thereby, whether the violation was chronic, and any justifying or mitigating circumstances and such other matters as the Grantor may deem appropriate.

(d) If the Grantor elects to assess liquidated damages then such election shall constitute the Grantor's exclusive remedy for a period of thirty (30) days. Thereafter, if Grantee remains in non-compliance with the requirement of its franchise, then the Grantor may pursue any available remedy.

(e) In the event the Council finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the Council may impose liquidated damages, payable from the security fund, of up to One Thousand Dollars (\$1,000) per day or per incident, for unexcused violations of the System upgrade and/or rebuild completion schedule provided in Section 3.1 herein, and up to Two Hundred Dollars (\$200) per day or per incident for all

other violations, provided that all violations of a similar nature occurring at the same time shall be considered one (1) incident.

2.10 Annual Report.

In addition to the requirements of Section 120.26 of the Ordinance, Grantee shall submit a written end-of-the-year report to Grantor of services, changes, customer service and operational and ownership change.

### **SECTION 3. SYSTEM UPGRADE/REBUILD**

#### **3.1 Rebuild.**

Grantee shall rebuild, as appropriate, the existing Cable System to provide a capacity of at least eighty (80) channels of video programming corresponding to an upper operating frequency of Seven Hundred Fifty Megahertz (750 Mhz). The construction of the rebuilt Cable System must be completed within thirty-six (36) months after the effective date of this Agreement, using a fiber optic infrastructure and fiber to node architecture. The Cable System, when completed, will be built with the capacity to immediately activate two-way service when services are available and when requested as provided in Section 5.1 of this Agreement. Further, to the extent construction of a node is complete and two-way service to the area served by the node is available, Grantee shall, if needed and requested by City, immediately activate two-way service in accordance with the provision of section 5.1 of this Agreement.

It is understood that technology is changing rapidly. Therefore, Grantee may utilize other technology in the rebuild if such technology upgrades the design and system capacity.

The Grantee has indicated that at the time of this Agreement, it cannot specify the number of channels it will activate on the rebuilt Cable System, however, it is agreed by both the Grantor and Grantee that the purpose of rebuilding the Cable System is to offer more services and programming in future years.

Six (6) months before the completion of the rebuilt Cable System, the Grantee shall notify the Grantor of the number of channels and types of services it intends to activate on the Cable System.

3.2 Emergency Alert Capability.

Within thirty-six (36) months of the effective date of this Agreement, Grantee shall provide the System capability to transmit an emergency alert signal to all participating Subscribers, in the form of a video override capability to permit Grantor to interrupt and cablecast a video message on all channels simultaneously in the event of disaster or public emergency.

3.3 Standby Power.

Within thirty-six (36) months of the effective date of this Agreement, Grantee shall provide standby power generating capacity at the cable communications System control center capable of providing at least three (3) hours of emergency supply. Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

3.4 Parental Control Lock.

Grantee shall provide, for sale or lease, to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any channels offered by Grantee.

3.5 Status Monitoring.

Grantee shall provide an automatic status monitoring System or a functional equivalent when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

**3.6    Technical Standards.**

The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as may be amended from time to time shall apply, to the extent permitted by applicable law.

**3.7    Right of Inspection.**

Grantor shall have the right to inspect all construction, reconstruction or installation work performed by Grantee under the provisions of the Franchise and other pertinent provisions of law, to ensure Grantee's compliance and to protect the public health, safety and welfare of Grantor's citizens. Grantee shall have the right to be present at such inspections.

**3.8    Periodic Evaluation and Review.**

Grantor and Grantee acknowledge and agree that the field of cable television is a relatively new and rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise Agreement. Therefore, to provide for the maximum degree of flexibility in this Franchise Agreement, and to help achieve a continued, advanced and modern Cable System, the following evaluation and review provisions will apply:

(a)    The City may request evaluation and review sessions at any time during the term of this Agreement and Grantee shall cooperate in such review and evaluation; provided, however, there shall not be more than one (1) evaluation and review session during any calendar year.

(b)    Topics which may be discussed at any evaluation and review session include, but are not limited to, rates, channel capacity, the System performance, programming, PEG

access, municipal uses of cable, Subscriber complaints, judicial rulings, FCC rulings and any other topics the City or Grantee may deem relevant.

(c) During an evaluation and review session, Grantee shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may request to perform the evaluation and review.

(d) If at any time during the evaluation and review, the City reasonably believes there is evidence of inadequate technical performance of the Cable System, the City may require Grantee, at Grantee's expense, to perform appropriate tests and analyses directed toward such suspected technical inadequacies. In making such request, the City shall describe and identify as specifically as possible the nature of the problem and the type of test the City believes to be appropriate. Grantee shall cooperate fully with the City in performing such tests and shall report to the City the results of the tests, which shall include at least:

- (1) a description of the problem in the System performance which precipitated the special tests;
- (2) the System component tested;
- (3) the equipment used and procedures employed in testing;
- (4) the method, if any, by which the System performance problem was resolved;
- (5) any other information pertinent to said tests and analyses.

(e) As a result of an evaluation and review session, the City or Grantee may determine that a change in the System or in the terms of the Franchise Agreement may be

appropriate. In that event, either the City or the Grantee may propose modifications to the System or the Franchise. Grantee and the City shall, in good faith, review the terms of the proposed change and any proposed amendment to this Franchise Agreement and seek to reach agreement on such change or amendment, when the change or amendment is not inconsistent with the terms of the Franchise Agreement, or with applicable law or regulations, and the change or amendment is technically feasible, economically reasonable and will not result in a material alteration of the rights and duties of the parties under the Franchise Agreement.

## **SECTION 4. SERVICES AND PROGRAMMING**

### **4.1 Programming**

(a) Broad Programming categories. Grantee shall provide or enable the provision of at least the following Initial broad categories of Programming:

- (1) Educational programming;
- (2) News & information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children/family-oriented;
- (6) Arts; culture and performing arts;
- (7) Foreign language;
- (8) Science/documentary;
- (9) Weather information;
- (10) National, state and local government affairs;

(b) Deletion or reduction of Programming categories.

- (1) Grantee shall not delete or so limit as to effectively delete any broad category of Programming identified in Section 4.1(a) and within its control without the consent of the City or as otherwise authorized by law.
- (2) In the event of a modification proceeding under federal law, the mix and quality of services provided by the Grantee on the effective date of

this Franchise shall be deemed the mix and quality of services required under this Franchise throughout its term.

4.2 Leased Commercial Access.

Grantee shall offer leased commercial access on reasonable terms and conditions and according to applicable law.

4.3 Periodic Subscriber Survey.

(a) Commencing in 199\_\_, at least once every three years, the Grantee shall provide the results of subscriber surveys, to the extent it determines that those results are not confidential. Each questionnaire shall be prepared and conducted in good faith so as to present reasonably reliable measures of Subscriber satisfaction with:

- (1) signal quality;
- (2) response to Subscriber complaints;
- (3) billing practices;
- (4) program services; and
- (5) installation practices.

(b) As a part of each annual report, Grantee shall provide the City with a summary of the results of any survey to the extent the results are not confidential, conducted during the prior year Grantee shall report in writing what steps Grantee is taking to implement the findings of the survey, such as correcting problems and expanding services.

## SECTION 5. SUPPORT FOR LOCAL CABLE USAGE

### 5.1 Institutional Network.

(a) Upon completion of its rebuild, as described in Section 3.1, and subject to the provisions of this Section, Comcast shall make available capacity, both upstream and downstream on its Cable System sufficient to provide video, voice and data communication services (hereinafter "Telecommunications Services") to both residential and non-residential users. Such capacity shall be known as the "Telecommunications Network". The City shall have access to and use of the Telecommunications Network provided that the Telecommunications Network shall at all times remain the property of Comcast, its successors and assigns and nothing herein nor any use, however, extended, shall be deemed to confer any proprietary right to the Telecommunications Network or any other part of Comcast's facilities.

(b) Telecommunications Services will, upon request of the City, be made available to those City buildings set forth in Exhibit C ("Sites"). Connection and access to the Telecommunications Network shall be provided to Sites within ninety (90) days of the City's request. One drop per Site shall be made without charge for installation of up to one hundred and fifty aerial feet. The City shall be responsible for selecting, purchasing, installing and maintaining any premises equipment necessary for individuals at the Sites to use Telecommunications Network. In addition to the City, Comcast may provide Telecommunications Services to residential and other non-residential subscribers on such terms and at such rates as Comcast may in its discretion determine.

(c) The City shall pay Comcast reasonable access and usage fees for the City's use of the Telecommunications Network. Comcast represents and warrants that all such fees shall be equal to or less than the fees for like telecommunications service tariffed and charged by any other distributor of such services in the Fort Wayne metropolitan area.

(d) Comcast's obligation to provide Telecommunications Services to the Sites hereunder shall be subject to the following conditions: Receipt of all necessary federal, state and local permits, licenses and authorizations to provide Telecommunication Services in the City and the ability for Comcast and the City to comply with all applicable federal, state and local laws, rules and regulations.

(e) Comcast will not pass through, as an external cost to residential subscribers of the cable system, the cost of providing Telecommunication Services to the Sites.

## 5.2 Public, Educational or Government Access Facilities.

(a) Following completion of the System Upgrade/Rebuild, Grantee shall make available to each of its subscribers who receive some or all of the services offered on the System, reception of at least five (5) access channels which shall be used for non-commercial purposes as follows:

- (1) Channel 6 - Indiana Purdue Fort Wayne (educational access);
- (2) Channel 10 - Allen County Public Library (public access);
- (3) Channel 18 - Government access;
- (4) Channel 20 - Fort Wayne Community Schools (educational access); and
- (5) Additional public access channel.

The channels designated for access shall be provided by Grantee as a part of the Basic Service. The access channels shall be made available by Grantee for use by the City and its citizens in accordance with the rules and procedures established by the City or any lawfully designated person, group, organization or agency authorized by the City for that purpose.

(b) Grantee shall dedicate an additional channel for public, educational or governmental access upon the City's request if any access channel is in continuous use from 8:00 a.m. to 11:00 p.m. for three (3) consecutive months provided, however:

- (1) The use of repeat programming in excess of ten percent of the amount of original programming on that channel, as well as text or character-generated programming shall not be considered a continuous use.
- (2) The access channels shall be considered separately. Continuous use of one channel to capacity as defined in this Section 5.2(b) is sufficient to initiate a request for an additional channel.
- (3) In no event shall Grantee be required to provide in excess of seven (7) access channels total.
- (4) To the extent any access channel is not being used for the provision of non-commercial, public, educational or governmental access purposes, Grantee shall be permitted to use such channel(s) for the provision of other services subject to any reasonable rules established by the City regarding such use.

Grantee's permitted use of any access channel made pursuant to this section shall cease within ninety (90) days of Grantee's receipt of notice

from City that such channel will again be used for public, educational or governmental access.

(c) Notwithstanding the above, Grantee may accommodate a request from the City for additional access capacity made pursuant to Section 5.2(b) by combining more than one access use on a channel provided that

- (1) It is technically and economically feasible for Grantee to do so; and
- (2) The scheduling needs of all users of the channel can be reasonably accommodated; and
- (3) The access entity (IPFW, FWCS, ACPL, City) which requires use of the alternate channel must be able to access the alternate channel from the site where it normally originates playback of its programs and may not be required to transport tapes to a remote site for playback.
- (4) If one of the four access entities identified in Section 5.2(a) is continually using its channel as defined in section 5.2(b) of this Agreement and has additional need for channel capacity to distribute programming four or more hours per day, five days per week for six consecutive weeks, the City may require the Grantee to dedicate an additional access channel for the use by that access entity subject to the limitation imposed by Section 5.2(b)(3).

(d) Origination Points

Grantee shall provide free cable transmission facilities at the below listed origination points for activated return capability. Grantee shall also provide free modulation equipment

to introduce programming onto these transmission facilities by linking the below listed origination points with the headend, or through hubs to the headend, for distribution to all subscribers generally and for distribution to discrete audiences via scrambled signals and decoders. The origination points are as follows:

1. Allen County Public Library
2. Ft. Wayne Community Schools
3. Indiana/Purdue/Ft. Wayne (IPFW) Regional Campus
4. Ft. Wayne City-County Building
5. Ft. Wayne Police Center (new)

Costs of providing said facilities shall not be a credit against payment of the franchise fee imposed under this Franchise Agreement nor a credit against the capital grant provided for in this Franchise Agreement, except as provided for in Section 5.2(e).

(e) Access Equipment and Facilities

Grantee's Responsibility for Equipment. Grantee is responsible for all headend equipment essential to playback of programming, including operation and maintenance, and all equipment necessary to perform those functions.

Grantor's Responsibility for Access. The Grantor shall be responsible for the operation of Access Facilities and Equipment. In this regard Grantor may delegate from time to time its responsibilities to others who then shall assume the responsibility of Grantor in accordance with the Grantor's delegation.

The Grantor will develop reasonable rules regarding use of Access Facilities and Equipment and determine the needs of the City for public, educational and governmental

access services. In this regard the Grantor shall regularly coordinate with Grantee for the purpose of developing and maintaining reasonable Access Facilities.

The Grantor, or persons to whom it delegates responsibility for access, shall have the responsibility to provide funding for operating expenses associated with public, educational and governmental access. Costs for Facilities and Equipment shall be paid for through a Grant Program established by this Agreement and approved by the Grantor.

The Grant Program. During the term of this Agreement, Grantee shall pay Grantor eight hundred thousand dollars (\$800,000) in cash. The Grant may be used by Grantor to purchase, repair, and replace Public, Educational or Governmental Access Facilities. The Grant shall be distributed in accordance with the following plan:

Upon execution of this Agreement, Grantee shall pay Grantor the sum of two hundred fifty thousand dollars (\$250,000). Upon the second anniversary date of the execution of this Agreement, Grantee shall pay Grantor the sum of one hundred thousand dollars (\$100,000). On the third through eleventh anniversary dates of the execution of this Agreement, Grantee shall pay to Grantor the sum of fifty thousand dollars (\$50,000).

### 5.3      Compliance with Federal Law.

In accepting this Franchise Agreement, the Grantee expressly agrees that the commitments indicated in this Section 5 are knowingly, voluntarily and intelligently entered into and any commitments and/or payments will not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such commitments and/or payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the City by Grantee

pursuant to Section 2.2 hereof or (ii) part of the compensation to be paid to the City by Grantee pursuant to Section 2.2 hereof.

## **SECTION 6. REGULATION**

### **6.1    Franchise Regulation.**

The Franchise renewed under this Agreement shall be subject to regulation by Grantor in accordance with all of the lawful provisions of the Ordinance.

### **6.2    Force Majeure.**

Neither Grantor nor Grantee shall be liable for damages or subject to penalty due to delay or failure to perform any duty imposed by this Franchise Agreement or by the Ordinance if such delay or failure results directly or indirectly from circumstances beyond the control of such party.

Within thirty (30) days of Grantee's discovery of the event causing such delay or failure, Grantee shall provide Grantor written notice describing the cause of the delay or failure and estimating the period of time in which such delay or nonperformance will be cured.

### **6.3    Rate Regulation.**

If Grantor is permitted under Federal and/or State law, to regulate the rates charged by Grantor, and if Grantor elects to so regulate, Grantor shall establish reasonable procedures consistent with due process and applicable law and follow those procedures before so regulating.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement the date and year first above written.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
, City Clerk

(SEAL)

COMCAST CABLEVISION OF FT. WAYNE L.P.

By: \_\_\_\_\_

(Corporate Seal) Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
                    ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_,  
19\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the City of  
Fort Wayne, on behalf of the City.

---

Notary Public

STATE OF \_\_\_\_\_ )  
                    ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_,  
19\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Comcast  
Cablevision of Ft. Wayne L.P., on behalf of the company.

---

Notary Public

EXHIBIT A

OWNERSHIP  
COMCAST CABLEVISION OF FT. WAYNE L.P.

This exhibit shall be completed by Grantee with its acceptance of Franchise and shall include at a minimum:

1. Description of ownership;
2. Authority (corporate resolution authorizing execution);
3. Proof of financial qualifications of Grantee to satisfy terms of franchise.

EXHIBIT B

FRANCHISE FEE PAYMENT WORKSHEET

Within sixty (60) days of this Franchise Agreement, Grantor and Grantee shall agree on format of payment worksheet to identify sources of revenue and verification of payments to Grantor.

EXHIBIT C

PUBLIC BUILDINGS

**FORT WAYNE FIRE DEPARTMENT**

STATION 1:	419 E. Main 46802
STATION 2:	2023 Taylor 46802
STATION 5:	5801 Bluffton Rd. 46809
STATION 6:	1500 W. Coliseum 46808
STATION 7:	1602 Lindenwood 46808
STATION 8:	6035 Rothman 46835
STATION 9:	2530 E. Pontiac 46803
STATION 10:	1245 E. State 46805
STATION 11:	405 E. Rudisill 46806
STATION 12:	5300 S. Anthony 46806
STATION 13:	6900 Red Haw Drive
STATION 14:	3400 Reed Road 46805
FIRE ACADEMY:	2700 Dwenger 46803
FIRE PREVENTION:	305 E. Murray St. 46803

UNIVERSITIES

**Concordia Theological Seminary**  
6600 North Clinton

**IPFW**  
2101 E. Coliseum

**Ivy Tech**  
3800 N. Anthony

**ITT**  
1600 E. Washington Blvd.

**St. Francis College**  
2701 Spring

**Taylor University**  
1025 West Rudisill

POLICE DEPARTMENT

**Southgate**  
334 E. Pettit

**Headquarters**  
1302 E. Creighton

**Policy Academy**  
1903 St. Marys Avenue

**Police Substation:** 1103 E. Coliseum 46805

**CITY GOVERNMENT BUILDINGS**

One Main Street

705 E. State Blvd.

1701 S. Lafayette

1100 Griswold Drive

415 E. Wallace

515 E. Wallace

2601 Dwenger Avenue

2225 Dwenger Avenue

1100 S. Calhoun St.

223 W. Main Street

Lawton Park - Clinton & Fourth

**ALLEN COUNTY LIBRARIES**

900 Webster Street

6600 East State Street

2201 Sherman Blvd.

304 Warsaw

5600 Noll Avenue

1411 East State Blvd.

2200 Lower Huntington Road

CIVIC CENTERS

**Botanical Conservatory**  
1100 South Calhoun

**Embassy Theatre**  
121 West Jefferson

**Foellinger Theatre**  
3109 Sherman Blvd.

**Grand Wayne Center**  
120 West Jefferson

**McMillen Ice Rink**  
2500 Oxford

**Memorial Coliseum**  
4000 Parnell Avenue

**Performing Arts Center**  
303 East Main Street

**United Way of Allen County**  
227 E. Washington Blvd.

**YMCA - Central Branch**  
1020 South Barr

**YMCA - Old Fort**  
2221 Reed

**YWCA**  
2000 North Wells

## FORT WAYNE COMMUNITY SCHOOLS

**Abbett**  
4325 Smith

**Adams**  
3000 New Haven Avenue

**Anthis Career Center**  
1200 South Barr

**Arlington**  
8118 Saint Joe Center Road

**Blackhawk Middle School**  
7200 East State Blvd.

**Bloomingdale**  
1300 Orchard

**Brentwood**  
3710 Stafford Drive

**Bunche**  
1111 Greene

**Croninger**  
6700 Trier Road

**Elmhurst Senior High**  
3829 Sandpoint Road

**Fairfield**  
2825 Fairfield Avenue

**Forest Park**  
2004 Alabama Avenue

**Franke Park**  
282 Mildred Avenue

**Geyer Middle**  
420 East Paudling

**Glenwood Park**  
4501 Vance Avenue

**Harrison Hill**  
355 Cornell Circle

**Holland**  
7000 Red Haw Drive

**Indian Village**  
3835 Wenonah Lane

**Irwin**  
3501 South Anthony Blvd.

**Jefferson Middle**  
5303 Wheelock Road

**Kekionga Middle**  
2929 Engle Road

**Lakeside Middle**  
2100 Lake Avenue

**Lane Middle**  
4901 Vance Avenue

**Lincoln**  
1001 East Cook Road

**Lindley**  
2201 Ardmore Avenue

**Maplewood**  
2200 Maplewood Road

**Memorial Park Middle**  
2200 Maumee Avenue

**Miami Middle**  
8100 Amhurst Drive

**Nebraska**  
1525 Boone

**North Side Senior High**  
475 East State Blvd.

## FORT WAYNE COMMUNITY SCHOOLS

**Haley**  
2201 Maplecrest Road

**Harris**  
4501 Thorngate Drive

**Portage Middle**  
3521 Taylor

**Price**  
1901 Wast State Blvd.

**St. Joseph Central**  
6341 Saint Joe Center Road

**Shambbaugh**  
5320 Rebecca Drive

**Shawnee Middle**  
1000 East Cook Road

**Snider Senior High**  
4600 Fairlawn Pass

**South Side Senior High**  
3601 South Calhoun

**South Wayne**  
810 Cottage Avenue

**Southern Heights**  
950 East Fairfax Avenue

**Study**  
2414 Brooklyn Avenue

**Ward**  
3501 Warsaw

**Washington**  
1015 West Washington Blvd.

**Northcrest**  
5301 Archwood Lane

**Northrop Senior High**  
7001 Coldwater Road

**Young**  
1026 East Pontiac

**Wayne Senior High**  
9100 Winchester Road

**Waynedale**  
7201 Elzey

**Weisser Park**  
902 Colerick

## CATHOLIC SCHOOLS

**Bishop Dwenger High**  
1300 East Washington Center Road

**Bishop Luers High**  
333 East Paulding Road

**Most Precious Blood**  
1529 Barthold

**Queen of Angels**  
1600 West State Blvd.

**Sacred Heart**  
4643 Gaywood Drive

**St. Charles**  
3700 Reed Road

**St. Henry's**  
3029 East Paulding Road

**St. John The Baptist**  
4500 Fairfield Avenue

**St. Joseph**  
205 Mulberry

**St. Jude's**  
2110 Pemberton Drive

**St. Patrick's**  
2120 South Harrison

**St. Therese**  
2222 Lower Huntington Road

**St. Vincent**  
8753 Auburn Road

## **LUTHERAN SCHOOLS**

**Bethlehem-Trinity**  
3705 South Anthony Blvd.

**Concordia Evangelical**  
4245 Lake Avenue

**Emmanuel - St. Michael**  
1123 Union

**Emmaus Lutheran**  
2320 Broadway

**Holy Cross**  
3425 Crescent Avenue

**St. John's Lutheran**  
725 West Washington Blvd.

**St. Paul's**  
1125 South Barr

**Trinity**  
1636 Saint Marys Avenue

**Unity**  
5401 South Calhoun

**Zion**  
2313 Hanna

Note: Buildings not identified on above list may be included by Grantor's notice to Grantee of the building and location. Grantor shall provide free drop within ninety (90) days after receipt of notice.



# The City of Fort Wayne

Paul Helmke, Mayor

MEMO      March 28, 1995

R-95-04-03

TO:      Fort Wayne Common Council

FROM:      David Hawk, Esq.,  
Chairman of the Cable Refranchising Committee and  
Associate City Attorney

RE:      New Cable Television Ordinance and Franchise  
Agreement

On behalf of Mayor Paul Helmke, I am pleased to submit to Fort Wayne City Council two documents which will extend and improve cable television service for the residents of the City of Fort Wayne.

The first document is a cable television "Regulatory Ordinance", something Fort Wayne has not had before. It sets the rules for the general governing of cable television, and should help City officials, the public, and Comcast understand the level of cable television service that any Franchise holder must provide and sustain throughout the life of a franchise.

The second document is the actual "Franchise Agreement" between the City of Fort Wayne and Comcast Cablevision of Fort Wayne, L.P. It gives Comcast the right to operate a cable television company in Fort Wayne and its provisions include the specific terms by which Comcast and the City must live throughout the duration of the Franchise.

For your further information, attached is a more detailed summary of these two documents.

